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DIGBY ADLER GROUP d/b/a BANDAGO

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

DIGBY ADLER GROUP LLC,

Plaintiff,

vs.

IMAGE RENT A CAR, INC., et al.,

Defendants.

Case No. 3:10-cv-00617-SC (BZ)

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION TO COMPEL
DISCOVERY RESPONSES;
REQUEST FOR SANCTIONS;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

Date: April 6, 2011
Time: 10:00 a.m.
Ctrm: G, 15th Floor
Judge: The Hon. Bernard Zimmerman

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1 TO THE COURT, THE PARTIES, AND ALL COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE THAT at a date and time to be determined by the Court,
3 in the United States District Court for the Northern District of California, located at 450
4 Golden Gate Avenue, San Francisco, CA 94102, Plaintiff Digby Adler Group LLC d/b/a
5 Bandago ("Plaintiff") will move this Court for an order: a) compelling Defendants Image
6 Rent A Car, Inc. and Van Rental Co. to amend and supplement their responses to
7 Plaintiff's First Set of Requests for Production, b) compelling Defendants to serve
8 responses to Plaintiff's Second Set of Interrogatories, c) compelling Defendants to
9 provide verifications to their responses to Plaintiff's First and Second Sets of
10 Interrogatories, d) compelling Defendants to serve their initial disclosures, and e)
11 imposing sanctions, in the form of Plaintiff's attorneys' fees, against Defendants and in
12 favor of Plaintiff pursuant to Federal Rule of Civil Procedure 37(a)(5).

13 This motion is made upon the ground that despite Defendants' verbal agreement
14 to amend and supplement their responses to Plaintiff's First Set of Interrogatories and
15 Requests for Production, Defendants have failed to amend their deficient responses.
16 Furthermore, despite Plaintiff's multiple efforts to meet-and-confer, Defendants have
17 refused to respond to Plaintiff's Second Set of Interrogatories, and even failed to meet-
18 and-confer. Finally, Defendants have refused to serve their verification of their
19 interrogatory responses or their initial disclosures.

20 This motion is based upon this notice as well as the accompanying memorandum
21 of points and authorities, the declaration of Jeffrey M. Rosenfeld in support of this motion,
22 the record in this case, and any other evidence and argument that may be adduced at
23 any hearing.

24 DATED: February 15, 2011

KRONENBERGER BURGOYNE, LLP

25
26 BY: /s/ Jeffrey M. Rosenfeld
Jeffrey M. Rosenfeld

27 Attorneys for Plaintiff
28 DIGBY ADLER GROUP d/b/a BANDAGO

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

Despite Plaintiff's multiple efforts to meet-and-confer, Defendants' discovery responses remain deficient. Defendants have refused to produce documents at the center of this lawsuit. For example, Defendants have refused to produce any financial records or any lists of the domain names that Defendant Image Rent A Car, Inc. ("Image") has owned. Moreover, Defendants have altogether refused to respond to Plaintiff's second set of discovery, have refused to provide verifications for any of their responses to Plaintiff's first set of discovery, and have refused to provide initial disclosures.

Plaintiff is left with no choice but to bring this motion. Given Defendants' refusal to abide by the spirit or letter of the federal discovery rules, the Court should compel Defendants to supplement their discovery responses and should impose sanctions, in the form of attorneys' fees, against Defendants.

BACKGROUND

Plaintiff filed its complaint in this action on February 11, 2010. [D.E. No. 1.] Counsel for the parties met-and-conferred pursuant to Federal Rule of Civil Procedure 26(f) in early June 2010, filing their initial Rule 26(f) case management statement with the Court on June 9. (Declaration of Jeffrey M. Rosenfeld in Support of Plaintiff's Motion to Compel ("Rosenfeld Decl.") ¶2.) & [D.E. No. 35.] On July 29, 2010 Plaintiff served on both Defendants Plaintiff's First Set of Requests for Production of Documents and Plaintiff's First Set of Interrogatories (collectively, the "First Set of Discovery Requests"). (Rosenfeld Decl. ¶3.) Defendants' responses to the First Set of Discovery Requests were due on September 2, 2010. (*Id.* ¶4.)

Even after Plaintiff sent meet-and-confer letters and the parties held telephonic conferences, Defendants failed to provide responses to the First Set of Discovery Requests. (Rosenfeld Decl. ¶5.) Only after Plaintiff filed its Motion to Compel on November 3, 2010, and the Court ordered Defendants to respond did Defendants serve

1 their responses to the First Set of Discovery Requests. (*Id.* ¶6.) Although Defendants
2 had ample time to prepare responses, their responses were highly deficient. (*Id.* ¶6 &
3 Exs. A-D.) The parties engaged in a telephonic meet-and-confer about these responses
4 on January 5, 2011, which they recorded. (*Id.* ¶7.) During this conference, Defendants
5 agreed to amend and supplement their responses by January 13, 2011 and to provide
6 verifications to their interrogatory responses by the same date. (*Id.* ¶8.)

7 In addition to Plaintiff's First Set of Discovery Requests, Plaintiff propounded a
8 second set of interrogatories to both Defendants (the "Second Set of Interrogatories") on
9 December 9, 2010. (Rosenfeld Decl. ¶9 & Exs. E-F.) Responses to the Second Set of
10 Interrogatories were due on January 13, 2011, along with Defendants' supplemental
11 responses to the First Set of Discovery. (*Id.* ¶10.) On January 13, 2011 Defendants
12 informed Plaintiff that their supplemental responses would not be ready by the agreed
13 upon deadline, but would be served the following week. (*Id.* ¶10 & Ex. G.) A month has
14 passed and to this day Defendants have not provided: 1) supplemental responses to the
15 First Set of Discovery Requests, 2) responses to the Second Set of Interrogatories
16 (collectively, the "Responses"). Nor have Defendants contacted Plaintiff about their
17 delinquent Responses, served their verifications, or served their initial disclosures. (*Id.*
18 ¶12.)

19 Plaintiff has contacted Defendants to meet-and-confer about the Responses by
20 various means in the last month. On January 18, 2011 Plaintiff sent a letter to
21 Defendants by overnight courier, requesting an opportunity to discuss the Responses
22 and reminding Defendants about the required verifications. (Rosenfeld Decl. ¶13 & Ex.
23 H.) By January 24, Defendants had still not responded. Plaintiff called Defendants and
24 left a voicemail on January 24. (*Id.* ¶14.) To follow-up, Plaintiff emailed Defendants the
25 next day, January 25. (*Id.* ¶15 & Ex. I.) As a final measure, on January 31 Plaintiff sent
26 another letter to Defendants by overnight courier, notifying Defendants that Plaintiff
27 would seek Court intervention unless Defendants provided the promised Responses. (*Id.*
28 ¶16 & Ex. J.)

1 On February 2, 2010, Plaintiff filed a letter brief to Magistrate Judge Zimmerman,
2 requesting the Court hold a telephonic conference to discuss the outstanding discovery
3 issues. (Rosenfeld Decl. ¶17) & [D.E. 68.] Defendants filed their own brief on February
4 3, 2010. [D.E. 69.] Defendants' brief failed to address the issues in Plaintiff's February 2
5 letter, but rather introduced their own complaints. (*Id.*) Defendants' February 3 letter
6 was the first contact Defendants had made with Plaintiff's counsel since Defendants'
7 January 13 email. (*Id.* ¶18.) On February 8, 2011 Judge Zimmerman held a telephonic
8 conference for the parties. (D.E. 72.) During the telephonic conference, Judge
9 Zimmerman granted Plaintiff leave to file a motion to compel.

10 **CERTIFICATION OF MEET-AND-CONFER EFFORTS**

11 Plaintiff's counsel met-and-conferred with Defendants' counsel on January 5, 2011
12 during a recorded, telephonic conference. (Rosenfeld Decl. ¶7.) When Defendants
13 failed to supplement their responses to Plaintiff's First Set of Discovery Requests and
14 failed to provide Responses to Plaintiff's Second Set of Interrogatories, Plaintiff contacted
15 Defendants' counsel by sending correspondence via overnight courier on January 18 and
16 31, by phone, leaving a voicemail on January 24, and by email on January 25. Despite
17 Plaintiff's varied attempts to meet-and-confer with Defendants, Defendants never
18 responded to Plaintiff's counsel. (Rosenfeld Decl. ¶¶13-16.) Although Plaintiff's counsel
19 has made a good faith effort to meet-and-confer with Defendants' counsel, the parties
20 have failed to resolve the disputes raised in this motion—and in regards to the Second
21 Set of Interrogatories, Plaintiff has been unable to meet-and-confer with Defendants
22 about the missing responses despite repeated efforts. (*Id.* ¶19.)

23 **ARGUMENT**

24 Rule 26(b)(1) allows discovery regarding any non-privileged matter that is relevant
25 to any party's claims or defenses. With its First Set of Discovery Requests and its
26 Second Set of Interrogatories, Plaintiff sought information and documents from
27 Defendants at the center of this action. Defendants either provided facially deficient
28

1 responses or refused to respond altogether. Plaintiff requests that the Court compel
2 Defendants to supplement their deficient responses.

3 Importantly, while many of Defendants' responses to Plaintiff's First Set of
4 Discovery Requests are not credible, Plaintiff has chosen not to raise them in this
5 motion. As limited examples, in response to Plaintiff's First Set of Discovery Requests,
6 Defendant Van Rental Co. ("Van") maintained that it never had any employees, never
7 had a board of directors, never promoted its goods or services on any website, never had
8 any bylaws or charters, never had any documents identifying its shareholders, never had
9 a legal relationship with Image, never prepared any profit and loss statements, never
10 prepared any balance sheets, never prepared any documents evidencing any expenses,
11 and had never filed any tax returns. (*Id.* ¶6 & Ex. C-D.) Image's discovery responses
12 are similarly incredible. (*Id.* ¶6 & Exs. A-B.) Plaintiff intends to present these incredible
13 responses to the jury, and Plaintiff requests that the Court be wary of any attempt by
14 Defendants to substantively change these responses.

15 Based on the foregoing, Plaintiff has moved to compel regarding only those
16 discovery requests where Defendants failed to respond or where Defendants' response
17 is so facially deficient that Plaintiff cannot proceed in the litigation without a substantive
18 response.

19 **A. Image has failed to provide substantive responses to several Requests for**
20 **Production.**

21 **1. Image's Domain Names**

22 • **Request for Production No. 9 to Image:**

23 DOCUMENTS sufficient to IDENTIFY every domain name YOU have owned,
24 registered, or licensed since January 2007.

25 • **Image's Response to Request No. 9:**

26 Defendant Image objects to this demand on the grounds that it is vague,
27 ambiguous, overly broad, vexatious, unduly burdensome and seeks irrelevant
28

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1 information not reasonably calculated to lead to the discovery of admissible
2 evidence.

3
4 The domain names that Image has owned, registered, or licensed are directly
5 relevant to Plaintiff's cybersquatting claim. The Anti-Cybersquatting Consumer
6 Protection Act, 15 U.S.C. §1125(d), states that in determining whether a defendant
7 engaged in bad faith conduct, a court may consider, "the person's registration or
8 acquisition of multiple domain names which the person knows are identical or confusingly
9 similar to marks of others that are distinctive at the time of registration of such domain
10 names . . ." Plaintiff is entitled to discover whether Defendant has engaged in a pattern
11 and practice of cybersquatting by registering or using domain names similar to third
12 parties' trademarks.

13 Defendants' objection that the Request is vague or ambiguous is nonsensical.
14 The Request is straightforward and any reasonable person would understand it.
15 Moreover, the Request is not overly-broad or unduly burdensome. Documents
16 identifying Defendants' domain names are in Defendants' possession or can easily be
17 generated by Defendants through their domain name registrar account.

18 Thus, the Court should order Image to produce a list of all domain names that it
19 has owned, registered, or licensed since 2007.

20
21 **2. Defendants' Finances**

22 Requests for Production Nos. 50-53 all relate to Image and Van's finances. Thus,
23 to streamline this motion, Plaintiff has set forth Requests for Production Nos. 50-53 and
24 their responses consecutively, followed by Plaintiff's argument regarding all of these
25 discovery requests.

26 • **Request for Production No. 50 to Image:**

27 ALL of YOUR profit and loss statements for the fiscal years 2007, 2008,
28 2009, and 2010.

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1 • **Image's Response to Request No. 50:**

2 Defendant objects to this demand on the grounds that it is vague,
3 ambiguous, overly broad, vexatious, unduly burdensome and seeks
4 irrelevant information not reasonably calculated to lead to the discovery
5 of admissible evidence. However, over objection without waiving same,
6 Image Reponds [sic] as follows: Image is not in possession or control of
7 any balance sheets for the fiscal years 2007, 2008, 2009, and 2010.

8 • **Request for Production No. 51 to Image:**

9 ALL of YOUR balance sheets for the fiscal years 2007, 2008, 2009, and
10 2010.

11 • **Image's Response to Request No. 51:**

12 Defendant objects to this demand on the grounds that it is vague,
13 ambiguous, overly broad, vexatious, unduly burdensome and seeks
14 irrelevant information not reasonably calculated to lad to the discovery
15 of admissible evidence. However, over objection without waiving same,
16 Image Reponds [sic] as follows: Image is not in possession or control of
17 any balance sheets for the fiscal years 2007, 2008, 2009 and 2010.

18 • **Request for Production No. 52 to Image:**

19 ALL DOCUMENTS REGARDING ANY cost or expense identified in
20 YOUR 2007, 2008, 2009, or 2010 profit and loss statement.

21 • **Image's Response to Request No. 52:**

22 Defendant objects to this demand on the grounds that it is vague,
23 ambiguous, overly broad, vexatious, unduly burdensome and seeks
24 irrelevant information not reasonably calculated to lead to the discovery
25 of admissible evidence. However, over objection without waiving same,
26 Image Reponds [sic] as follows: Image is not in possession or control of
27 any documents reflecting any cost or expense profit [sic] and loss
28

statement for the reasons stated in the Response of Image to “Request 50 and 51”.

• **Request for Production No. 53 to Image:**

ALL of YOUR tax filings for the fiscal years 2007, 2008, 2009, and 2010.

• **Image’s Response to Request No. 53:**

Defendant objects to this demand on the grounds that it is vague, ambiguous, overly broad, vexatious, unduly burdensome and seeks irrelevant information not reasonably calculated to lead to the discovery of admissible evidence. Moreover, Plaintiff is not entitled to same as Plaintiff never alleged in the Complaint that Defendants profited from the alleged use of the Bandago Mark.

• **Request for Production No. 50 to Van:**

ALL of YOUR profit and loss statements for the fiscal years 2007, 2008, 2009, and 2010.

• **Van’s Response to Request No. 50:**

Defendants objects to this demand on the grounds that it is vague, ambiguous, overly broad, vexatious, unduly burdensome and seeks irrelevant information not reasonably calculated to lead to the discovery of admissible evidence. However, over objection without waiting same, Van Respond [sic] as follows: Van has never had any income and thus, Van has never prepared a profit and loss statement.

• **Request for Production No. 51 to Van:**

ALL of YOUR balance sheets for the fiscal years 2007, 2008, 2009, and 2010.

• **Van’s Response to Request No. 51:**

Defendant objects to this demand on the grounds that it is vague, ambiguous, overly broad, vexatious, unduly burdensome and seeks

1 irrelevant information not reasonably calculated to lead to the discovery
2 of admissible evidence. However, over objection without waiving same,
3 Van has never had any income and thus, Van has never prepared a
4 balance sheet.

5 • **Request for Production No. 52 to Van:**

6 ALL DOCUMENTS REGARDING ANY cost of expense identified in
7 YOUR 2007, 2008, 2009, or 2010 profit and loss statement.

8 • **Van's Response to Request No. 52:**

9 Defendant objects to this demand on the grounds that it is vague,
10 ambiguous, overly broad, vexatious, unduly burdensome and seeks
11 irrelevant information not reasonably calculated to lead to the discovery
12 of admissible evidence. However, over objection without waiving same,
13 Van Responds [sic] as follows: Van is not in possession or control of
14 any documents reflecting any cost of expense [sic] profit and loss
15 statement for the reasons stated in the Response of Van to "Request 50
16 and 51.". [sic]

17 • **Request for Production No. 53 to Van:**

18 ALL of YOUR tax filings for the fiscal years 2007, 2008, 2009, and
19 2010.

20 • **Van's Response to Request No. 53:**

21 Defendant objects to this demand on the grounds that it is vague,
22 ambiguous, overly broad, vexatious, unduly burdensome and seeks
23 irrelevant information not reasonably calculated to lead to the discovery
24 of admissible evidence. However, over objection without waiving same,
25 Van Responds [sic] as follows: Van has never had any income sufficient
26 to require filing of taxes and thus, Van has never filed taxes.

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1 Defendants refused to produce any financial information in response to these
2 Requests, claiming that they do not have such basic documents as balance sheets and
3 profit and loss statements. Defendants' responses are not credible, and the Court should
4 not consider them valid responses.

5 Defendants also objected to these Requests on the ground that they seek
6 irrelevant information. However, Defendants' finances are directly relevant to this action,
7 where Plaintiff has asserted claims for cybersquatting, unfair competition, and false
8 advertising under the Lanham Act. The Lanham Act specifically authorizes a plaintiff to
9 recover a defendant's wrongful profits. 15 U.S.C. §1117. Plaintiff is entitled to
10 Defendants' basic financial records to assess Defendants' wrongful profits. It is
11 impossible to calculate such wrongful profits without this basic financial information.

12 Given Defendants' refusal to produce any financial information, it is appropriate for
13 the Court to order Defendants to produce their tax returns. In determining whether the
14 discovery of tax returns is warranted the Court must engage in a two-part test. First, the
15 Court must determine whether the tax returns are relevant to the subject matter of the
16 action. Second, the Court must determine whether a compelling need exists for the
17 returns because such information is not otherwise available. *See A. Farber & Partners,*
18 *Inc. v. Garber*, 234 F.R.D. 186, 292 (C.D. Cal. 2006); *Aliotti v. Vessel SENORA*, 217
19 F.R.D. 496, 497-498 (N.D. Cal. 2003). This two-part test is satisfied here. First, 15
20 U.S.C. §1117 specifically authorizes a plaintiff to recover a defendant's wrongful profits,
21 and a defendant's financial records are necessary to evaluate its wrongful profits.
22 Second, a compelling need exists for Defendants to produce their tax records here
23 because Defendants have refused to produce any other financial information—and in
24 fact, Defendants maintain that they have no financial records in their possession other
25 than their tax returns.

26 Because Defendants' finances are relevant to this action, and because
27 Defendants have refused to produce any financial records, the Court should order
28 Defendants to produce their tax records. If Defendant Van still maintains that it has not

1 filed any tax returns, the Court should order Van to produce documents sufficient to
2 identify the income or loss (and supporting financial data) that was passed through to its
3 shareholders during the last five years.

4
5 **B. Defendants have refused to respond to Plaintiff's Second Set of Interrogatories.**

6 On December 9, 2010, Plaintiff served its Second Set of Interrogatories on
7 Defendants Image and Van. Pursuant to Federal Rule of Civil Procedure 33(b)(2),
8 Defendants' responses were due on January 13, 2011. Despite Plaintiff's meet and
9 confer efforts, Defendants have refused to respond to these Interrogatories.

10
11 • **Interrogatory No. 8 to Image and Van:**

12 IDENTIFY ALL PERSONS involved in the registration or re-registration of the
13 domain name <bandago.net>.

14 • **Interrogatory No. 9 to Image and Van:**

15 IDENTIFY the method of payment for ANY registration or re-registration of the
16 domain name <bandago.net>, including the name on ANY payment account,
17 credit card or debit card that was used for payment.

18 • **Interrogatory No. 10 to Image and Van:**

19 IDENTIFY ALL PERSONS who accessed or edited the domain name registration
20 account for the domain name <bandago.net>, including but not limited to re-
21 directing the domain name <bandago.net> to another website.

22 • **Interrogatory No. 11 to Image and Van:**

23 IDENTIFY ALL of YOUR shareholders, including the number of shares owned
24 and/or the percentage of the company owned since 2007.

25 • **Interrogatory No. 12 to Image and Van:**

26 IDENTIFY ES Colin.
27
28

Plaintiff's Second Set of Interrogatories are directly relevant to this action. The interrogatories seek to clarify who was responsible for the registration of the domain name <bandago.net>. The interrogatories also seek to identify any shareholders of the corporate defendants Van and Image, and to identify an individual who filed a document with this Court on behalf of Defendants. This is basic information about the misconduct at issue and the corporate structure of Defendants. Plaintiff is entitled to this information, and the Court should order Defendants to respond to Plaintiff's Second Set of Interrogatories.

C. Defendants have refused to verify their interrogatory responses.

Courts have stressed that the verification requirement is an essential part of responding to interrogatories. By failing to provide explicit, responsive, complete, candid, and verified answers, a party fails to comply with its discovery obligations under Federal Rule 33. *E.E.O.C. v. Kovacevich "5" Farms*, No. 106-0165, 2007 WL 1599772, *3 (E.D. Cal. June 4, 2007). Verifications remain an important aspect of discovery because they allow the receiving party to trust that the responding party has attested to the truth of its interrogatory responses. *Knights Armament Co. v. Optical Sys. Tech., Inc.*, 254 F.R.D. 463, 466-67 *aff'd*, 254 F.R.D. 470 (M.D. Fla. 2008.) Thus, the failure to meet the simple requirement of providing verifications can only be seen as a flagrant disregard of the federal discovery rules. *Saria v. Massachusetts Mut. Life Ins. Co.*, 228 F.R.D. 536, 540 (S.D.W. Va. 2005).

Defendants have refused to provide verifications to their interrogatory responses. During the January 5, 2011 telephonic conference, Plaintiff reminded Defendants that they had not yet provided verifications. Defendants promised to provide verifications with their forthcoming supplemental and amended responses. Yet, Defendants' verifications never came. In subsequent correspondence regarding Defendants' missing supplemental and amended responses, Plaintiffs reminded Defendants again and again about their need to verify their interrogatory responses. Even so, Defendants have

1 refused to produce verifications. Thus, the Court should order Defendants to produce
2 verifications immediately.

3
4 **D. Defendants refuse to serve their initial disclosures.**

5 Rule 26(a)(1) requires parties to serve their initial disclosures fourteen (14) days
6 after the initial scheduling conference or at a date agreed upon by the parties. In the
7 Amended Rule 26(f) Report and Joint Case Management Statement, which Defendants
8 filed with the Court on November 16, 2010 [D.E. 50], the parties agreed to serve Initial
9 Disclosures no later than December 15, 2010. Defendants never served their initial
10 disclosures. Despite Plaintiff's efforts to meet-and-confer, Defendants have continued to
11 refuse to serve their initial disclosures. The Court should order Defendants to serve their
12 initial disclosures immediately as required by Rule 26(a).

13
14 **E. The Court should impose sanctions in the form of Plaintiff's attorneys' fees against Defendants.**

15 Federal Rule of Civil Procedure 37(a)(5) provides that if a motion to compel is
16 granted—or if the requested discovery is provided after the motion was filed—"the court
17 must, after giving an opportunity to be heard, require the party or deponent whose
18 conduct necessitated the motion, the party or attorney advising that conduct, or both to
19 pay the movant's reasonable expenses incurred in making the motion, including
20 attorney's fees." Where a party shows that its several attempts to obtain answers to
21 interrogatories prior to filing a motion to compel were of no avail, the party is entitled to
22 an award of attorneys' fees to compensate it for the expense incurred in preparing the
23 motion. See *Walt Disney Co. v. DeFabiis*, 168 F.R.D. 281, 284 (C.D. Cal. 1996). Such a
24 discovery sanction is a self-executing, automatic sanction to provide a strong inducement
25 for disclosure of material; no showing of bad faith or willfulness is required, and no
26 showing of prejudice to the opposing party is required. See *Frontline Medical*
27 *Associates, Inc. v. Coventry Health Care*, 263 F.R.D. 567, 568 (C.D. Cal. 2009). Thus,
28 the party facing discovery sanctions bears the burden of showing that its failure to

1 comply with the discovery rules was justified. *Id.*; *OracleUSA, Inc. v. SAP AG*, 264
2 F.R.D. 541, 545 (N.D. Cal. 2009).

3 Defendants have not—and cannot—make any showing of substantial justification
4 for their complete avoidance of the meet-and-confer process regarding Plaintiff's Second
5 Set of Interrogatories, and their failure to amend and supplement their responses to
6 Plaintiff's First Set of Discovery Requests. Because Defendants have refused to provide
7 substantive responses to Plaintiff's discovery requests, despite multiple extensions and
8 meet-and-confer efforts, the Court should impose sanctions, in the form of Plaintiffs'
9 attorneys' fees, against Defendants and in favor of Plaintiff. The Court should also
10 impose sanctions against Defendants for their chronic failure to provide verifications or
11 initial disclosures despite Plaintiff's repeated reminders.

12 13 CONCLUSION

14 For the foregoing reasons, Plaintiff respectfully requests that the Court issue an
15 order: a) compelling Defendants to amend and supplement their responses to Plaintiff's
16 First Set of Set of Requests for Production, b) compelling Defendants to provide
17 responses to Plaintiff's Second Set of Interrogatories, c) compelling Defendants to
18 provide verifications for their responses to Plaintiff's First and Second Sets of
19 Interrogatories, and d) compelling Defendants to serve their initial disclosures, and e)
20 imposing sanctions, in the form of Plaintiff's attorneys' fees, against Defendants and in
21 favor of Plaintiff.

22 DATED: February 15, 2011

Respectfully submitted,

23
24 **KRONENBERGER BURGOYNE, LLP**

25 BY: /s/ Jeffrey M. Rosenfeld
Jeffrey M. Rosenfeld

26
27 Attorneys for Plaintiff
DIGBY ADLER GROUP d/b/a BANDAGO